



N A R U C  
National Association of Regulatory Utility Commissioners

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November 20, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Chairman Michael Powell  
Commissioner Kevin Martin  
Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
445 12<sup>th</sup> Street SW, Portals II Building  
Washington, D.C. 20544

**RE: Notice of Written Ex Parte Comment – Two Originals filed in the proceeding captioned: *In the Matter of Review of the Section 2.51 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).**

Dear Commissioners:

As this year ends, all eyes in the telecommunications industry are focused on your agency's plans to act in the above-captioned proceeding. As you know, just last month, NARUC Commissioners from all over the country converged on Detroit either in person or by phone to discuss local phone competition issues with two FCC Commissioner colleagues.

NARUC believes it speaks volumes of those FCC Commissioners' sensitivity to State concerns that they traveled to Detroit and devoted practically a whole day to the meeting. A representative from the office of the Chairman and another staff representative from the FCC's Wireline Competition Bureau also attended. We believe their presence demonstrates recognition that States must continue to play a significant role in the partnership fostered by the 1996 legislation. Commissioner Copps was unable to make the meeting because of some unavoidable conflicts, but he also made specific arrangements to speak separately with interested NARUC Commissioners on these issues.

This letter is to re-emphasize our commitment to the tasks Congress assigned to the State commissions. We urge each of you not to limit or restrict the tools available to the States in fulfilling our Congressionally assigned tasks as we join the FCC to meet our common goal of assuring that consumers reap the benefits of a competitive local market. In this environment, the country will benefit from State experimentation. The FCC should follow the suggestions of the recent D.C. Circuit decision and allow States to make the granular analysis needed to see which UNEs are required in their respective markets.

**STATE FLEXIBILITY TO MAINTAIN UNE-P AS WELL AS THE ABILITY TO ADD TO ANY NATIONAL UNE LIST IS CRITICAL TO KEEPING COMPETITION "ON TRACK."**

The undersigned strongly support, as a necessary prerequisite to keeping the competition initiative on track, continued State flexibility to maintain the LINE-I<sup>1</sup> as an entry strategy, as well as the ability to add to any national list of UNEs. Any restriction on the State flexibility on this option will negatively impact the growth of local competition. We offer the following basic outline as our suggestions for the components of a useful FCC order in this docket.

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List AD-1

**Elements State Regulators Urge as Components of any FCC Order**

**(1) NO STATE PREEMPTION:**

Any FCC Order should make clear no preemption is intended or should be implied - particularly with respect to additions to the National list imposed by States.

**(2) PRESUMPTIVE NATIONAL LIST THAT INCLUDES EXISTING UNE's**

FCC list should, at a ~~minimum~~, include all existing items.

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(3) STATE CHECK ~~OFF~~ BEFORE A UNE ~~IS~~ DE-LISTED

Carriers that want to remove an item from the list must **make** a factual case before **a** State commission

(4) TIMING OF IMPACT OF STATE DECISION

Any challenged UNE stays on ~~the~~ required list until State commission **makes** contrary **finding**.

(5) CAUCUS ~~WITH~~ STATES NECESSARY PREREQUISITE

FCC **should** caucus with State Commissions extensively before promulgating the "necessary and impair" standard used to evaluate if a UNE should be available.

(6) STATE AUTHORITY TO ADD UNEs CONFIRMED.

FCC should **confirm** its previous **ruling** that States **RETAIN the** right **to** add to the **national** list after hearing based **on** State **and** Federal law.

~~State~~ commissions remain focused on the difficult ~~tasks~~ of promoting facilities-based competition ~~as~~ envisioned by the 1996 Telecommunications Act **and assuring** customers receive **better** services and **more** choices at **lower** prices. **We** emphasize that we cannot accomplish that ~~important~~ economic policy goal without the availability ~~of~~ effective competitive ~~entry~~ strategies such as UNE-P.

Thank **you** for your **attention** to our **concerns**. Please do not hesitate to contact **any** one of **us** for additional information **on this** or any **other** telecommunications issue.

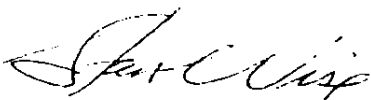
Sincerely,



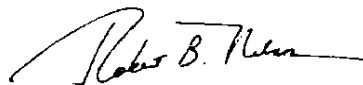
David **A.** Svanda, NARUC President;  
Michigan Commissioner



Commissioner **Joan** Smith, Chair,  
Telecommunications Committee



**Stan** Wise, NARUC First Vice President;  
Georgia Commissioner



Commissioner Robert Nelson, Co-Vice Chair,  
NARUC Telecommunications Committee



Marilyn Showalter, NARUC Second Vice  
President; Washington Chairwoman



**Thomas** J. Dunleavy, Co-Vice Chair,  
Telecommunications Committee

Additional Signatories to the Letter (The original is signed.):

New Jersey Commissioner Jack Alter  
Arkansas Commissioner Daryl E. Basseit  
Oregon Commissioner Lee Beyer  
New Mexico Commiissioner Jerome D. Block  
Nebraska Chair Anne Boyle  
South Dakoia Chair James A. Burg  
Verniont Commissioner John Burke  
New Jersey Board Commissioner Fred Butler  
Utah Commiissioner Ric Campbell  
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Michigan Chair Laura Chappelle  
North Dakota Commissioner Anthony T. Clark  
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